

Kjersten H. Turpen, OSB No. 025920
 kjersten.turpen@ogletreedeakins.com
 Florence Z. Mao, OSB No. 144804
 florence.mao@ogletreedeakins.com
 OGLETREE, DEAKINS, NASH,
 SMOAK & STEWART, P.C.
 The KOIN Center
 222 SW Columbia Street, Suite 1500
 Portland, Oregon 97201
 Tel: (503) 552-2140
 Fax: (503) 224-4518

Attorneys for Defendant BFS Asset Holdings LLC

UNITED STATES DISTRICT COURT
 DISTRICT OF OREGON
 PORTLAND DIVISION

EFRAIN INOCENCIO VEGA,

Plaintiff,
 v.

**BFS ASSET HOLDINGS LLC doing business as
 BUILDERS FIRSTSOURCE,**

Defendant.

Case No.

**DEFENDANT'S NOTICE OF
 REMOVAL TO FEDERAL COURT**

28 U.S.C. §§ 1332, 1441, AND 1446

WASHINGTON COUNTY CIRCUIT
 COURT CASE NO. 23CV23997

**TO: THE CLERK OF THE ABOVE-ENTITLED COURT, PLAINTIFF EFRAIN
 INOCENCIO VEGA, AND HIS ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. sections 1332, 1441(a) and (b), and 1446, Defendant BFS Asset Holdings LLC removes the above referenced action from the Oregon Circuit Court, Washington County, Case No. 23CV23997, to the United States District Court, for the District of Oregon. Federal jurisdiction of this action is proper on the basis of diversity jurisdiction under 28 U.S.C. sections 1332 and 1441(b). Defendant's Notice of Removal is based upon and supported by the following:

1. This Court has original jurisdiction over this action under 28 U.S.C. § 1332(a), which grants district courts original jurisdiction over a civil action in which the matter in controversy exceeds \$75,000, exclusive of interest and costs, and that is between citizens of different states. As set forth below, this action meets all of the requirements for removal, and is timely and properly removed by the filing of this Notice.

BACKGROUND

2. On or about June 14, 2023, Plaintiff Efrain Inocencio Vega caused the Complaint to be filed against Defendant BFS Asset Holdings LLC in the Circuit Court of the State of Oregon for the County of Washington (“the State Court Action”). *See Exhibit 1 (Complaint).*

3. On June 16, 2023, Plaintiff served Defendant with a Summons and Complaint. *See id.*, Exhibits 2-3 (Proof of Service and State Action docket at the time of removal).

4. This Notice is timely as it is filed within 30 days of the service of the Summons and Complaint on Defendant. *See 28 U.S.C. § 1446(b).*

STANDARD OF REVIEW

5. The sufficiency of the allegations in this Notice of Removal is reviewed under the standard of notice pleading; no evidentiary submissions are necessary. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 87 (2014) (Congress, by borrowing the familiar “short and plain statement” standard from Rule 8(a) intended to “simplify the ‘pleading’ requirements for removal” and to clarify that courts should “apply the same liberal rules [to removal allegations] that are applied to other matters of pleading.”) (citing H.R. Rep. No. 100-889, p. 71 (1988)); *see also Liberty Natural Productions, Inc. v. Hoffman*, No. 03:11-cv-00264-HU, 2011 WL 4625703, *4-5 (D. Or. Sept. 2, 2011) (“§1446(a) requires that a notice of removal only contain a ‘short and plain statement of the grounds of removal,’” which is satisfied where defendant “alleges that diversity exists and the amount in controversy exceeds the sum specified under § 1332”); 14C C. Wright, A. Miller, E. Cooper, & J. Steinman, *Federal Practice and Procedure* § 3733, pp. 639-41 (4th ed. 2009) (“Section 1446(a) requires only that the grounds for

removal be stated in ‘a short and plain statement’ – terms borrowed from the pleading requirement set forth in the Federal Rule of Civil Procedure 8(a).”).

DIVERSITY JURISDICTION

Diversity of Citizenship

6. This action is a civil action that may be removed from the state court under 28 U.S.C. §§ 1332, 1441(a) and 1446 because, on information and belief, there is complete diversity between Plaintiff and Defendant.

7. Defendant and Plaintiff are citizens of different states and, therefore, there is complete diversity of citizenship under 28 USC § 1332.

(a) Plaintiff’s Citizenship. The citizenship of a natural person is determined by his/her state of domicile. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). Plaintiff alleges in his Complaint that he was employed with Defendant from March 18 until August 5, 2022, in Beaverton, Oregon. Upon information and belief, Plaintiff is a citizen of the State of Oregon. Turpen Decl., Exh. 1 ¶¶ 1, 3.

(b) Defendant’s Citizenship. Defendant is a limited liability company organized under the laws of Delaware and registered to do business in Oregon. A limited liability company “is a citizen of every state of which its owners/members are citizens.” *See 3123 SMB LLC v. Horn*, 880 F.3d 461, 465 (9th Cir. 2018). Defendant is a limited liability company organized under the laws of Delaware. Its principal place of business is in Irving, Texas. Defendant’s sole member is Builders FirstSource, Inc., a corporation organized under the laws of the State of Delaware, with its principal place of business in Irving, Texas. *See Declaration of Minator Azemi in support of Defendant’s Notice of Removal*, ¶ 3.

8. A corporation is a citizen of (i) its state of incorporation; and (ii) the state in which its principal place of business is located. 28 U.S.C. § 1332(c)(1). The principal place of business refers to “the place where a corporation’s high level officers direct, control, and coordinate the corporation’s activities,” which is typically the corporation’s headquarters. *Hertz*

Corp. v. Friend, 559 U.S. 77, 92-93 (2010). Defendant is therefore a citizen of the States of Texas and Delaware for removal purposes under 28 U.S.C. § 1332.

9. Based on the foregoing, Plaintiff and Defendant are citizens of different states for purposes of diversity jurisdiction. There is complete diversity of citizenship under 28 U.S.C. § 1332.

Amount in Controversy

10. In determining the amount in controversy, the Court must consider the aggregate of general damages, special damages, punitive damages, and attorneys' fees. *Galt G/S v. ISS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (claims for statutory attorneys' fees to be included in amount in controversy, regardless of whether such an award is discretionary or mandatory); *see also Bank of Calif Nat'l Ass in v. Twin Harbors Lumber Co.*, 465 F.2d 489, 491 (9th Cir. 1972). Here, Plaintiff claims damages in the amount of \$120,000, consisting of economic damages not to exceed \$70,000, and noneconomic damages not to exceed \$50,000. *See generally* Complaint. The amount in controversy therefore exceeds the jurisdictional threshold. *See* 28 U.S.C. § 1446(c)(2) ("the sum demanded in good faith in the initial pleading shall be deemed to be the amount in controversy").

ALL OTHER REMOVAL REQUIREMENTS ARE SATISFIED

11. This Notice of Removal is timely because it is filed within 30 days of service of Plaintiff's Summons and Complaint. 28 U.S.C. § 1446(b)(2)(B) ("Each defendant shall have 30 days after receipt by or service on that defendant of the initial pleading or summons described in paragraph (1) to file the notice of removal.").

12. Removal to this Court is appropriate because the Complaint is pending in the Circuit Court of the State of Oregon for the County of Washington, which is located in the Portland Division.

13. Pursuant to 28 U.S.C. § 1446(d), Defendant will file a notice of removal with the Clerk of the Circuit Court of Washington County, Oregon, informing the court that this matter

has been removed to federal court. A copy of this Notice of Removal, including all supporting exhibits, will be attached to the notice of removal filed with the Circuit Court of Washington County, Oregon. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is also being served upon Plaintiff.

14. By removing on the basis of diversity jurisdiction, Defendant does not concede or make any admissions relating to the merit and/or value of Plaintiff's allegations, claims, or damages. Defendant denies the material allegations contained in the Complaint, generally and specifically.

WHEREFORE, Defendant respectfully requests that the State Action be removed from the state court in which it was filed to the United States District Court for the District of Oregon, and further requests that this Court issue all necessary orders and process and grant such other and further relief as in law and justice that Defendant may be entitled to receive.

DATED: July 17, 2023.

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.

/s/ Kjersten H. Turpen

Kjersten H. Turpen, OSB No. 025920
kjersten.turpen@ogletreedeakins.com
Florence Z. Mao, OSB No. 144804
florence.mao@ogletreedeakins.com

Attorneys for Defendant
BFS Asset Holdings LLC

CERTIFICATE OF SERVICE

I hereby certify that on July 17, 2023 I served the foregoing **DEFENDANT'S NOTICE OF REMOVAL TO FEDERAL COURT** on the parties below by electronic means through the Court's eFile and Serve system:

Cassandra Blake, OSB#193336
 David Henretty, OSB #031870
 Oregon Law Center
 230 NE 2nd Avenue, Suite F
 Hillsboro, OR 97124
 email: cblake@oregonlawcenter.org
 email: dhenretty@oregonlawcenter.org
 Telephone: (503) 640-4115
 Facsimile: (503) 640-9634

Attorneys for Plaintiff

- by **electronic** means through the Court's eFile and Serve system.
- by **mailing** a true and correct copy to address for the persons listed above.
- by causing a true and correct copy to be **hand-delivered** to the address of each person listed above. It was contained in a sealed envelope and addressed as stated above.
- by causing a true and correct copy to be delivered **via overnight courier** to the last known address of each person listed above. It was contained in a sealed envelope, with courier fees paid, and addressed as stated above.
- by **e-mailing** a true and correct copy to the persons listed above.

Dated: July 17, 2023

/s/ Douglas Paul

Douglas Paul, Practice Assistant
 douglas.paul@ogletreedeakins.com